

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

08 Cr. 1244

-against-

OPINION

GOSSETT MCPHERSON, ET AL.,

Defendants.

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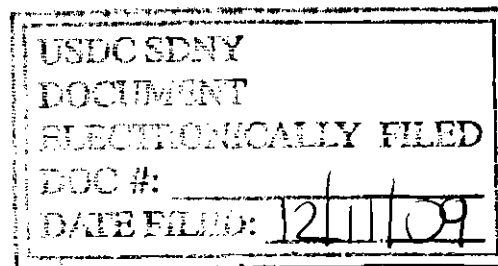
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**Sweet, D.J.**

Defendant Gossett McPherson ("McPherson" or the "Defendant") has moved for an order directing the Government to provide a bill of particulars pursuant to Rule 7(f), Fed. R. Crim. P., identifying the acts he is alleged to have committed in furtherance of the charged conspiracy as well as when, where, and with whom he committed those acts.

Upon the facts and conclusions set forth below, McPherson's motion is denied.

#### **I. PRIOR PROCEEDINGS**

On December 12, 2008, McPherson and six other individuals were indicted in the Southern District of New York. Count One of the indictment (the "Indictment") charges McPherson and others with conspiracy to import narcotics from Jamaica and distribute them in the United States between 2003 and 2008 in violation of 21 U.S.C. §§ 812, 841(a)(1), (b)(1)(A), and (b)(1)(B). Count Two charges McPherson and others with importing compounds containing cocaine into the United States from Jamaica in

violation of 21 U.S.C. §§ 812, 952, 960(b)(1)(B) and (b)(2)(G).

On May 29, 2009, a federal grand jury in this District returned and filed a superseding indictment S1 08 Cr. 1244 (RWS) (the "Superseding Indictment") against the same defendants, excluding Kathy Sanchez, and including defendant Norma Dixon. The Superseding Indictment also widened the time frame of the conspiracy from in or about 2000 through in or about 2008.

The instant motion was heard and marked fully submitted on December 9, 2009.

## **II. FACTS**

The facts which follow are based upon the affirmations and exhibits submitted by the parties in connection with Defendant's motion.

According to the Superseding Indictment, McPherson and his co-conspirators smuggled narcotics in commercial airplanes departing Jamaica for the United States. The Superseding Indictment alleges that members of

the conspiracy would stash multiple-kilogram quantities of narcotics beneath the toilet of a commercial flight bound for the United States. After the flight landed in the United States and cleared customs, a co-conspirator would board the flight for the next leg of the plane's trip. While on that flight, the co-conspirator would walk to the bathroom, remove the hidden narcotics, and conceal them either on his or her person or in his or her carry-on baggage. Because the plane had already cleared customs, the co-conspirator would not be searched upon exiting the plane with the narcotics. The co-conspirator would deliver the narcotics to McPherson and other members of the conspiracy for distribution within the United States. Alternatively, members of the conspiracy would stash multiple kilogram quantities of narcotics in a cargo panel of a plane departing Jamaica for the United States. Upon the arrival of the plane, co-conspirators employed by Newark International Airport removed the narcotics from the plane for further distribution within the United States.

To date, the Government has produced discovery to McPherson, pursuant to Rule 16, Fed. R. Crim. P., on at least six separate occasions. On or about February 13, 2009, the Government produced its initial discovery, which

included: the Indictment, complaint, and arrest warrants; reports and photographs related to a seizure of approximately one kilogram of cocaine on or about September 2, 2008; a report related to seizure of approximately eight kilograms of cocaine seized on or about October 2, 2000; surveillance photographs; wire transfer records; telephone records; applications and resulting data for pen register and cell site location authority information; criminal history records; the U.S. Marshals' intake forms for each defendant; Miranda waiver forms; speedy presentment waiver forms; a waiver of consular notification; a proffer agreement; and two DVDs, which contained a series of consensually recorded telephone calls and consensual recordings of in-person meetings. Supplemental Rule 16 discovery was also provided to Defendant on or about March 2, 2009; March 4, 2009; March 18, 2009; June 22, 2009; and July 15, 2009.

### **III. DEFENDANT IS NOT ENTITLED TO A BILL OF PARTICULARS**

McPherson seeks a bill of particulars from the Government identifying the dates and locations where he is alleged to have engaged in the unlawful conduct charged in the Superseding Indictment, with whom and for how long he

is alleged to have participated in these unlawful acts, and other facts related to the allegations in the Superseding Indictment. McPherson argues that without this particularized information, he will be unable to determine whether he has a viable alibi defense.

Rule 7(f), Fed. R. Crim. P., permits a defendant to seek a bill of particulars when necessary to "prepare for trial, to prevent surprise, and to interpose a plea of double jeopardy should he be prosecuted a second time for the same offense." United States v. Bortnovsky, 820 F.2d 572, 574 (2d Cir. 1987). A bill of particulars is required "only where the charges of the indictment are so general that they do not advise the defendant of the specific acts of which he is accused." United States v. Torres, 901 F.2d 205, 234 (2d Cir. 1990) (quotations marks and citation omitted). In addition, when considering requests for a bill of particulars, courts "must be cognizant of the fact that a bill of particulars confines the government's evidence at trial to the particulars furnished, [and] [t]hus the court is required to balance restricting the government's proof against protecting defendants from surprise." United States v. Payden, 613 F. Supp. 800, 816 (S.D.N.Y. 1985); see also id. at 817-18 (discussing

balancing competing considerations in context of conspiracy charge). "That the requested information would be useful to the defendant is not enough; if the defendant has been given adequate notice of the charges against him, the Government need not be required to disclose additional details about its case." United States v. Feola, 651 F. Supp. 1068, 1132 (S.D.N.Y. 1987) (citations omitted). Thus, the ultimate test must be "whether the information sought is necessary, not whether it is helpful." United States v. Love, 859 F. Supp. 725, 738 (S.D.N.Y. 1994).

Notably, "[a]cquisition of evidentiary detail is not the function of the bill of particulars." Torres, 901 F.2d at 234 (citation omitted). In general, the Government cannot be compelled to provide a bill of particulars disclosing such things as the manner in which it will attempt to prove the charges, the precise manner in which the defendant committed the crimes charged, or a preview of the Government's evidence or legal theories that it intends to present at trial. See United States v. Mitlof, 165 F. Supp. 2d 558, 569 (S.D.N.Y. 2001); see also United States v. Castro, No. 08 Cr. 268 (NRB), 2008 WL 5062724, at \*2 (S.D.N.Y. Nov. 25, 2008) ("An indictment need not identify

all alleged co-conspirators, nor specify the nature, time and place of every overt act the defendant or others allegedly took in furtherance of a conspiracy, nor must it set forth all the evidence the government intends to introduce."). In particular, "demands for particular information with respect to where, when, and with whom the Government will charge the defendant with conspiring are routinely denied." United States v. Trippe, 171 F. Supp. 2d 230, 240 (S.D.N.Y. 2001); United States v. Bin Laden, 92 F. Supp. 2d 225, 242 (S.D.N.Y. 2000) ("[R]equests, such as those made by the Defendants here, for particulars as to when, where, how, and with whom each individual defendant joined an alleged conspiracy have almost uniformly been denied." (internal quotation marks and citation omitted)); Feola, 651 F. Supp. at 1132 ("Details as to how and when the conspiracy was formed, or when each participant entered it, need not be revealed before trial.").

Here, the Superseding Indictment describes in detail "the nature and goals of the charged conspiracy," "the overt acts taken in furtherance of it," and "discloses sufficient information to inform the defendant[] adequately of the charges against [him]." United States v. Ferrarini, 9 F. Supp. 2d 284, 299 (S.D.N.Y. 1998). The Superseding



Indictment specifically identifies each defendant's role in the conspiracy, including that of McPherson, who is alleged to be one of the New York-based distributors of the drugs being imported into the United States by the conspiracy. In addition, McPherson has been provided with the Government's discovery relating to the allegations, and the Government has identified the particular drug seizures in the discovery that the Government believes it can link to McPherson. Ordering the Government to disclose additional details on the exact times and dates of Defendant's alleged illegal acts would essentially require the Government to provide a full preview of its evidence at trial, to which McPherson is not entitled. See Mitlof, 165 F. Supp. 2d at 569. Nor does McPherson's assertion that additional information is required in order for him to mount an alibi defense justify a bill of particulars. See Castro, 2008 WL 5062724, at \*3 ("Acquisition of evidentiary detail in the form of exact times of the acts alleged in the indictment for purposes of establishing an alibi is not the function of a bill of particulars."). Under these circumstances, Defendant is not entitled to a bill of particulars. See, e.g., United States v. Reinhold, 994 F. Supp. 194, 201 (S.D.N.Y. 1998) (denying request for bill of particulars where the "indictment is detailed in its allegations" and


the "defendants have had extensive discovery"); United States v. Pacheco, 902 F. Supp. 469, 475 (S.D.N.Y. 1995) (denying request for bill of particulars because "the charges are adequately set forth in the indictment, the criminal complaint, and in discovery"); United States v. Conesa, 899 F. Supp. 172, 176 (S.D.N.Y. 1995) (denying request for bill of particulars because "[t]he Indictment sufficiently advises defendants of the specific acts of which they are accused" and "the Government . . . has made available to defense counsel extensive discovery that supplements the information provided in the . . . Indictment").

#### IV. CONCLUSION

For the foregoing reasons, McPherson's motion for a Bill of Particulars is denied.

It is so ordered.

New York, NY  
December 6, 2009

  
ROBERT W. SWEET  
U.S.D.J.